IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12162 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANGHI BROTHERS (INDORE) PVT LTD - Petitioner(s)
Versus
OIL AND NATURAL GAS CORPN. LTD & 2 - Respondent(s)

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Appearance :
MR GT DAYANI for Petitioner(s) : 1,
None for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 27/06/2006

ORAL JUDGMENT

The petitioner being aggrieved of order dated 25th May 2006, received on 30th May 2006, banning the

petitioner for a period of five years from the date of issue, from entering into business dealings with ONGC is before this Court.

2. It is the case of the petitioner that the order dated 25th May 2006 is a non speaking order and therefore, the same is bad in law.

The learned advocate for the petitioner submitted that aspect is well is well settled by the judgements of the Hon'ble the Apex Court in the matter of (i) **M/s Southern Painters Vs. Fertilizers & Chemicals Travancore Ltd. And another,** reported in A.I.R. 1994 SC 1277; (ii) **M.J. Sivani and others Vs. State of Karnataka and others,** reported in A.I.R. 1995 SC 1770. The learned advocate submitted that the Delhi High Court has also so held in the matter of **U.E.E. Electrical Engineers Private Limited Vs. Delhi Development Authority**, reported in 2002 (3) Arbitration Law Report 318 (Delhi).

The learned advocate for the petitioner submitted that besides this matter requires consideration at the hands of this Court on the point of 'gross violation of the principles of natural justice' as the petitioner was not heard before passing the order in question.

The next argument of the learned advocate for the petitioner is that by any standard, order dated 25th May 2005 is a non speaking order, it does not provide

any reason and therefore, order is required to be quashed and set aside by this Court by exercising powers under Article 226 of the Constitution of India.

3. These submissions are not found acceptable by the Court. Order dated 25th May 2006 is produced at Annexure 'A' and the opening sentence of the order is,

> “Please refer to our Show Cause Notice of even dates 07/09/05 on the above subject.
> .. .. .. “.

Thus, the order refers to the Show Cause Notice. The Show Cause Notice is on record at Annexure 'H' (Page 35), wherein all the details of the irregularities alleged to have been committed by the petitioner are set out. The relevant para of the Show Cause Notice reads as under:

> “From the above it is established that you **repeatedly misrepresented, fraudulently produced forged/ fabricated documents for inspection and adopted unfair means to qualify the BEC criteria and got the award of the work against the open tender.** Thereafter, you had also wilfully substituted the two trucks with lower models and making us to believe as to the year of manufacture, what was not true.” (emphasis supplied)

By this Show Cause Notice the petitioner was asked to explain his so called conduct of producing forged/ fabricated documents for inspection and adopting unfair means in order to qualify the BEC criteria and getting the award of the work against the open tender. Once this Show Cause Notice is referred to in the order, then it is not necessary that all the contents of the Show Cause Notice be reproduced in the order.

The officer who passed the order is not a trained judicial officer and is therefore, not expected to write an order as goods as a reasoned judgement. If there was no reference to the said Show Cause Notice, then it could have been said that the petitioner did not know as to in what reference the order is passed. In that case, the petitioner can be heard to argue that the order issued came to him as 'bolt from the blue', but in the present case when the order refers to the Show Cause Notice and the Show Cause Notice gives all the details of the conduct of the petitioner which is branded as repeated misrepresentation, fraudulent production of forged and fabricated documents for obtaining an award of work on that basis, then the order cannot be branded as a non speaking order.

4. On merits of the matter, the petitioner himself wilfully substituted two trucks. This shows that he was convinced of the objection taken by the

respondent. Otherwise, there was no reason for the petitioner to substitute trucks on an objection raised by the respondent. If what is submitted by the petitioner is true 'today', then it was true even 'on that day', then the petitioner ought to have contested the objection raised by the respondent 'on that very day'. Raising a dispute now and approaching this Court under the discretionary power of the Court is certainly a delayed action on the part of the petitioner.

The submission of the learned advocate for the petitioner is even otherwise not acceptable. A judicial notice can be taken of the fact that when a person refers to **year of manufacture,** with reference to a vehicle it is not the 'year of registration' of that vehicle before the RTO authorities. Even a layman will be able to differentiate between the 'year of manufacture' and 'the year of registration'. The petitioner is representing before this Court that when it was asked by the tender document that the vehicle should be of particular 'year of manufacture' it meant that the vehicle should have been registered before the RTO authorities in that particular year. Such an argument which prima facie sounds to be absurd can be advanced by the learned advocate because he is acting on instructions of his client but then it cannot be accepted. Therefore, the case of the petitioner fails. The petition is dismissed. No order as to costs.

5. Mr.Dayani, the learned advocate for the petitioner submitted at this stage that this very matter is pending before the arbitrator. Be that as it may. It is for the learned arbitrator to take cognisance of this order or not, while deciding the matter in case this order is produced before him.

(RAVI R. TRIPATHI, J.)

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